

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1320 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HIRABHAI WIDOW OF HARIDAS KHIMJI PROPERTIES TRUST

Versus

CHIEF EXECUTIVE

Appearance:

MR RM CHHAYA with Mr. V.L.Thakar for Petitioners
MR PM RAVAL for Respondent No. 1
Mrs. S.D.Talati, AGP for
M/S PATEL ADVOCATES for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/03/2000

ORAL JUDGEMENT

By means of this petition, the petitioner Trust has sought for quashing the order/direction contained in the letter dated 21st January, 1988 issued

under section 67 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Act) at Annexure "B" and the directions mentioned in form no. K issued under Rule 29(9) framed under the said Act at Annexure "D", and for a direction to the respondents to vary town planning scheme no.1 in respect of survey no.1193 paiki, 1194/2, 2301 to 2309 of Siddhpur.

2. The petitioners are the trustees of a public trust known as Bai Hirabai, widow of Haridas Khimji Properties Trust, registered as a public trust under the provisions of the Bombay Public Trusts Act, 1950 having registration no. A730. The said Trust owns property at Siddhpur comprising survey no.1193 paiki, 1194/2, 2301 to 2309 in Siddhpur situated at Bindu Sarovar road. There is a temple of Lord Shiva in the survey no.1194/2. The Town Planning scheme came in force in the development area. The petitioners are the owners of survey nos. 1193 and 2301 to 2309. The original plot number of these survey numbers was 88. According to the respondent authorities, the final plots were made as 105 and 107 and that part and original plot no.88 made final plot no.106 of which possession is directed to be handed over to the respondent no. 4. The respondent no. 4 is also a Trust being Laxminarayan Trust, Siddhpur. The respondent no. 4 was the owner of revised survey no.1194/3-4 admeasuring 578 sq.mtrs. The original plot number was 91. The respondent no. 4 was allotted final plot no.106-104 admeasuring 517 sq.mtrs.

3. The petitioners have challenged the action of the respondent nos. 1 to 3 on the ground that the action of the respondent authorities violates fundamental rights of the petitioners guaranteed under Article 26 of the Constitution, wherein the petitioners are entitled to establish and maintain an institution for religious and charitable purpose to manage its own affairs in the matter of religion, to own and acquire movable and immovable properties and to administer such properties in accordance with law. The notice issued to the petitioners was served to Smt. Hirabai and some letters were received by Shri Nandlal Thakker. The notices are required to be served on the petitioners, but notices issued for such re-constitution of the plot as suggested and made final by the authorities have not been received by the petitioners.

4. The main grievance of the petitioners is that there is a temple of Lord Shiva in final plot no.106 belonging to the petitioners and final plot no.106 has

been allotted to the respondent no. 4. In case, action is taken according to final plot, there is a likelihood that the temple of Lord Shiva of the petitioners will be demolished. Hence, they have prayed that some changes should be made in the scheme. The area of final plot no. 106 should be given to the respondent no. 4 from the final plot no.107 which has been given to the petitioner and that final plot no.107 is the open area wherein the respondent no. 4 could be given the area of final plot no. 106. The area of final plot no.104 is 224 sq.mtrs. and the petitioners are ready to give that area from the final plot no.107 which is the open land and has been given to the petitioners in the town planning scheme. As such, the respondent no. 4 would have no grievance at all as the respondent no. 4 will be getting the same area of 224 sq.mtrs. which was allotted final plot no.106. Now, the respondent no.4 will get that area from the final plot no.107.

5. Heard the learned advocate for the parties. No one is present on behalf of the respondent no. 4. Perused the relevant papers on record. As per section 71 of the Act, a town planning scheme can be varied at any time by a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act. Under section 70 of the Act, if after the preliminary scheme or the final scheme has come into force, appropriate authority considers that the scheme is defective on account of any error, irregularity or informality, the appropriate authority may apply in writing to the State Government for the variation of the scheme.

6. The learned counsel for the petitioners urged that they are ready to make appropriate representation to the municipal authority i.e. respondent nos. 1 and 2 as they could not be able to bring to the notice of the authority regarding real facts in respect of the allotment of the final plot nos. 106 and 107 and they may be permitted to make such representation to the respondent nos. 1 and 2 and they may be directed to decide the same in accordance with law within a specified period and if the decision is taken in favour of the petitioner, then they may be required to send the same to the State Government for approval under the provisions of sections 48 and 65 of the Act.

7. In the facts and circumstances of the case, it would be proper to direct the petitioners to make a representation to the respondent nos. 1 and 2 for variation in the town planning scheme for change of area

of plot nos. 106 and 107. Accordingly, the petitioners are directed to make a representation to the respondent nos. 1 and 2 within a period of three weeks from today and the respondent nos. 1 and 2 will decide the same in accordance with law. If the respondent nos. 1 and 2 come to the conclusion that variation can be made, then the authorities will send the amended scheme regarding plot nos. 106 and 107 to the State Government for approval under sections 48 and 65 of the Act. The State Government is hereby directed to sanction variation suggested by the respondent nos. 1 and 2 in accordance with law and take further steps in the matter in accordance with law. This petition is finally disposed of. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

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